

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CHARLES A. NEELY, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

09-CV-05831-WJM

ORDER

THIS MATTER comes before the Court on Petitioner's request that the Court readdress the restitution order it entered against the petitioner on April 16, 2009 (the "Restitution Order"). In 2009, Petitioner Charles Neely was convicted of defrauding dozens of persons of a total of nearly \$4 million. This Court sentenced Mr. Neely to 20 months imprisonment and ordered restitution consisting of quarterly payments of \$25 while incarcerated, provided Mr. Neely complied with certain other conditions, and monthly payments of not less than \$200 to commence once he was released to supervision. Pursuant to 18 U.S.C. § 3664(k) (2002), this Court "may . . . adjust the payment schedule . . . as the interests of justice require" upon being "notif[ied]" by the Petitioner "of any material change in the Petitioner's economic circumstances that might affect the Petitioner's ability to pay restitution." *See also U.S. v. Millhouse*, 388 F. App'x 109, 110 (3d Cir. 2010); *U.S. v. Alston*, No. 04-515, 2010 WL 315523, at *4 (E.D. Pa. Aug. 2, 2010).

Mr. Neely has served his sentence and now seeks to modify his restitution schedule arguing that his time in prison exacerbated his health problems leaving him unable to work. Mr. Neely notifies the Court that he “is 62 years old, chronically ill, legally blind and physically disabled.” Further, Mr. Neely claims that his condition “worsened during his incarceration,” and he is now unable to “walk or stand” and is “gravely ill and unable to care for himself.” While Mr. Neely’s health problems are unfortunate, he has failed to show any type of material change justifying a modification of the Restitution Order. At the time of his sentencing, this Court noted that Mr. Neely had uncontrolled diabetes, coronary artery disease, hypertension, end-stage renal disease requiring daily dialysis, had incredible difficulty walking, suffered from hearing impairments, and needed daily assistance. This Court took Mr. Neely’s health problems into account when it recommended the restitution schedule and sees no justification for departing from that schedule now.

For the foregoing reasons;

IT IS on this 20th day of January 2011, hereby,

ORDERED that Petitioner’s request for modification of the Restitution Order is

DENIED.

/s/ William J. Martini
WILLIAM J. MARTINI, U.S.D.J.